

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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|-------------------------|---|--------------------------------|
| TAIWAN BURTON, #167305, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. 2:06cv141-WHA |
| |) | |
| JAMES DELOACH, et al., |) | |
| |) | |
| Respondents. |) | |

ORDER

This lawsuit is now before the court on Defendant's Motion to Appeal the Dismissal of Petitioner Writ of Habeas Corpus Petition which the court construes as a Notice of Appeal and a motion for issuance of certificate of appealability.

To obtain a certificate of appealability the prisoner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).¹ For the reasons given in the recommendation of the United States Magistrate Judge, the court finds that the petitioner has failed to make a "substantial showing of the denial of a constitutional right."

¹The standard for a certificate of appealability is that the petitioner must "make a 'substantial showing of the denial of [a] federal right.'" Barefoot v. Estelle, 463 U.S. 880, 893, 103 S.Ct. 3383, 3394 (1983) (quoting Stewart v. Beto, 454 F.2d 268, 270 n.2 (5th Cir. 1971), cert. denied, 406 U.S. 925, 92 S.Ct. 1796 (1972)). The Supreme Court further explained that "in requiring a 'question of some substance,' or a 'substantial showing of the denial of [a] federal right,' obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are 'adequate to deserve encouragement to proceed further.'" Id. at 893 n.4, 103 S.Ct. at 3394 n.4 (quoting Gordon v. Willis, 516 F. Supp. 911, 913 (N.D.Ga. 1980)).

Accordingly, it is ORDERED that petitioner's motion for a certificate of appealability is DENIED.

DONE, this the 5th day of June, 2008.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE